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MICHAEL W. HAAS RESPIRONICS, INC. 1010 MURRY RIDGE LANE MURRYSVILLE, PA 15668			KOPPIKAR, VIVEK D	
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/016,506	PAWLIKOWSKI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 03 October 2007.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,3-9,11,12,14-22 and 24-51 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-9,11-12, 14-22 and 24-51 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of the Application***

1. Claims 1-51 have been examined in this application. This Final Office Action is in response to the “Remarks” and “Amendment” filed on July 10, 2006.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,305,374 to Zdorjkowski in view of US Patent Number 5,715,390 to Hoffman in even further view of US Patent Number 5,725,559 to Alt and in even further view of US Patent Number 5,881,379 to Beier.

(A) As per claim 1, Zdorjkowski teaches a method of upgrading a pressure generating system comprising (Zdorjkowski: Abstract):

providing a pressure generating system including (a) a pressure generator adapted to generate a flow of breathing gas (Zdorjkowski: Col. 3, Ln. 3-27) and (b) a controller that controls operation of the pressure generator according to a first operating routine executed by the controller, wherein a set of operating features of the pressure generating system is determined based on the operating routine (Zdorjkowski: Col. 3, Ln. 3-23 and Col. 14, Ln. 44-48).

Upgrading the pressure generating system by causing the controller to execute a second operating so that the pressure generating system operates according to a second set of operating features

(Zdorjkowski: Col. 13, Ln. 19-35).

Zdorjkowski does not teach or suggest the other claimed features, however, these are remaining features are all well known in the art as evidenced by Hoffman. Specifically, Hoffman teaches:

wherein an internal access key is associated with each set of operating features of the medical device (Hoffman: Col. 4, Ln. 52-57);

providing an external device adapted to communicate with the controller; establishing a communication link between the external device and the controller (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6);

inputting an external access key to the external device; comparing the internal access key provided by the pressure generating system with the external access key (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6); and

enabling upgrading of the pressure generating system by enabling the operating routine to be modified responsive to the internal access key matching the external access key (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the method of Zdorjkowski with the aforementioned features from Hoffman with the motivation of providing a highly secure method of upgrading a device, as recited in Hoffman (Col. 36-38). (Note: Even though Hoffman is directed towards an electric meter the concept taught in Hoffman to upgrade an electric meter is the similar to the concept of the claimed invention. In addition, the concept of securely upgrading a device or controller in Hoffman can be applied to a variety of devices and machines).

Zdorjkowski in view of Hoffman do not teach the following feature which is taught by Alt (Abstract and Col. 7, Ln. 50-Col. 8, Ln. 35)

maintaining a database for a plurality of systems, wherein the database includes (a) a product identifier unique to each pressure generating system in the plurality of systems, (b) one or more operating routines available to each pressure generating system in the plurality of systems, and (c) external access keys associated with the one or more operating routines (Col. 1, Ln. 25-35 and Col. 5, Ln. 25-32).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the teachings of aforementioned references with the teachings from Alt with the motivation of having a means of preventing unauthorized upgrades to medical devices, as recited in Alt (Col. 4, Ln. 23-30). (Note: Alt deals with medical devices generally and therefore it is the position of the Examiner that pressure generating systems are within the scope of Alt.)

The above mentioned references do not teach the following feature which is taught by Beier (Col. 7, Ln. 26-32):

updating the database by assigning a new product identifier for an upgraded pressure generating system.

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have the aforementioned references with the above mentioned teachings from Beier with the motivation of having a means of uniquely identifying each segment of data, including updated data, as recited in Beier (Col. 7, Ln. 26-32).

(C) As per claim 3, the combined method of Zdorjkowski in view of Hoffman further comprises, after the enabling step, upgrading the pressure generating system by providing a second operating routine from the external device to the controller, wherein the controller

thereafter executes the second operating routine causing the pressure support system to operate according to a second set of operating features (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

(D) As per claim 4, the combined method of Zdorjkowski in view of Hoffman the first set of operating features includes a first pressure support mode, and wherein the second set of operating features includes a second pressure support mode (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

(E) As per claim 5, in the combined method of Zdorjkowski in view of Hoffman the first pressure support mode is a bi-level pressure support mode, and wherein the second pressure support mode is a bi-level pressure support mode with a timed backup breath delivery capability (Hoffman: Col. 4, Ln. 51-59). The motivation for making this modification to the teachings of Zdorjkowski is the same as set forth above, in the rejection of claim 1. (b) The first pressure support mode is a continuous positive airway pressure (CPAP) support mode and the second support mode is a variable positive airway pressure support mode in which the pressure delivered to the patient varies between inspiration and expiration (Zdorjkowski: Col. 3, Ln. 40-67).

(F) As per claim 6, in the combined method of Zdorjkowski in view of Hoffman the step of establishing the communication link includes providing a hard wired connection between the external device and the controller (Hoffman: Col. 4, Ln. 23-27).

(G) As per claim 7, in the combined method of Zdorjkowski in view of Hoffman the step of inputting the external access key to the external device includes manually entering the external access key into the external device via a keypad associated with the external device, or reading the external access key from a memory associated with the external device (Hoffman: Col. 4, Ln. 29-31).

(H) As per claim 8, in the combined method of Zdorjkowski in view of Hoffman further comprises the step of downloading the external access key to the controller responsive to the internal access key being input to the external device, and wherein comparing the internal access key with the external access key takes place in the controller (Hoffman: Col. 4, Ln. 57-63).

(I) As per claim 9, in the combined method of Zdorjkowski in view of Hoffman each internal access key associated with each set of operating features of the pressure generating system is (1) generated by the controller based on an access key generating algorithm each time the comparing step is to be performed (Hoffman: Col. 4, Ln. 29-33), or (2) stored in advance in a memory in the pressure generating system and recalled from the memory each time the comparing step is to be performed (Hoffman: Col. 4, Ln. 52-65).

(J) As per claim 10, in the combined method of Zdorjkowski in view of Hoffman, after the enabling step, upgrading the pressure generating system by providing an upgraded operating routine from the external device to the controller, wherein the controller thereafter executes the upgraded operating routine causing the pressure generating system to operate according to an upgraded set of operating features (Hoffman: Col. 1, Ln. 5-9).

(K) As per claim 11, in the combined method of Zdorjkowski in view of Hoffman, each internal access key associated with each set of operating features of the pressure generating system is generated by the controller based on an access key generating algorithm each time the comparing step is to be performed, and further comprising storing the external access key in the pressure generating system as a new internal access key, and causing the controller to generate the new internal access key in a subsequent access key validation process (Hoffman: Col. 4, Ln. 29-42).

(L) As per claims 12-21, the claims repeat features previously addressed in the rejection of claims 1-11, and are rejected on the same basis. (Note: These claims only differ from claims 1-11 in that they are directed towards a system rather than a method).

(M) As per claim 22, Zdrojkowski pressure generating system upgrading system comprising

(Zdrojkowski: Abstract): a pressure generating system including:

processing means for controlling at least one operation of the pressure generating system according to a first operating routine executed by the processing means (Zdrojkowski: Col. 3, Ln. 3-23 and Col. 14, Ln. 44-48), and

memory means, associated with the processing means, for storing the operating routine, wherein a first set of operating features of the pressure generating system is determined based on the first operating routine, and wherein an internal access key is associated with each set of operating features of the pressure generating system (Zdrojkowski: Col. 5, Ln. 48-57).

Zdrojkowski does not teach or suggest the other claimed features, however, these are remaining features are all well known in the art as evidenced by Hoffman.

Hoffman teaches an external device adapted to communicate with the processing means via a communication link between the external device and the processing means, wherein the external device includes means for receiving an external access key, wherein the processing means or the external device includes means for comparing the internal access key of the pressure generating system with the external access key and for enabling upgrading of the pressure generating system by modifying the operating routine to be modified responsive to the internal access key matching the external access key (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the device of Zdorjkowski with the aforementioned features from Hoffman with the motivation of providing a highly secure method of upgrading a device, as recited in Hoffman (Col. 36-38). (Note: Even though Hoffman is directed towards an electric meter the concept taught in Hoffman to upgrade an electric meter is the similar to the concept of the claimed invention. In addition, the concept of securely upgrading a device or controller in Hoffman can be applied to a variety of devices and machines).

Zdorjkowski in view of Hoffman do not teach the following feature which is taught by Alt (Abstract and Col. 7, Ln. 50-Col. 8, Ln. 35)

maintaining a database for a plurality of systems, wherein the database includes (a) a product identifier unique to each pressure generating system in the plurality of systems, (b) one or more operating routines available to each pressure generating system in the plurality of systems, and (c) external access keys associated with each of the one or more operating routine (Col. 1, Ln. 25-35 and Col. 5, Ln. 25-32).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the teachings of aforementioned references with the teachings from Alt with the motivation of having a means of preventing unauthorized upgrades to medical devices, as recited in Alt (Col. 4, Ln. 23-30). (Note: Alt deals with medical devices generally and therefore it is the position of the Examiner that pressure generating systems are within the scope of Alt.)

(O) As per claim 24, in the combined device of Zdorjkowski in view of Hoffman the processing means is adapted to receive a second operating routine from the external device responsive to the external access key matching the internal access key, and wherein the

processing means thereafter executes the second operating routine causing the pressure support system to operate according to a second set of operating features (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

(P) As per claim 25, in the combined device of Zdrojkowski in view of Hoffman the first set of operating features corresponds to a bi-level pressure support mode, and wherein the second set of operating features corresponds to a bi-level pressure support mode with a timed backup breath delivery capability (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6). The motivation for making this modification to the teachings of Zdorjkowski is the same as set forth above, in the rejection of claim 1. (b) The first pressure support mode is a continuous positive airway pressure (CPAP) support mode and the second support mode is a variable positive airway pressure support mode in which the pressure delivered to the patient varies between inspiration and expiration (Zdorjkowski: Col. 3, Ln. 40-67).

(Q) As per claim 26, in the combined device of the Zdrojkowski in view of Hoffman communication link is a hard wired connection between the external device and the processing means (Hoffman: Col. 4, Ln. 23-27).

(R) As per claim 27, in the combined device of the Zdrojkowski in view of Hoffman the external device includes a keypad by which the external access key is manually entered into the external device (Hoffman: Col. 4, Ln. 29-31).

(S) As per claim 28, in the combined device of Zdrojkowski in view of Hoffman the external device is adapted to download the external access key to the processing means, and wherein comparing the internal access key with the external access key takes place in the processing means (Hoffman: Col. 4, Ln. 52-65).

(T) As per claim 29, in the combined device of Zdrojkowski in view of Hoffman the processing means is adapted to generate each internal access key associated with each set of operating features of the medical based on an access key generating algorithm executed by the processing means each time an access key validation is required (Hoffman: Col. 4, Ln. 29-33).

(U) As per claim 30, in the combined device of Zdrojkowski in view of Hoffman the external device upgrades the pressure generating system by providing an upgraded operating routine from the external device to the processing means responsive to an upgrade being enabled, wherein the processing means thereafter executes the upgraded operating routine causing the pressure generating system to operate according to an upgraded set of operating features (Hoffman: Col. 1, Ln. 5-9).

(V) As per claim 31, in the combined device of Zdrojkowski in view of Hoffman the processing means generates each internal access key associated with each set of operating features of the pressure generating system based on an access key generating algorithm each time an access key validation process is to be performed, stores the external access key in the pressure generating system as a new internal access key, and generates the new internal access key in a subsequent access key validation process (Hoffman: Col. 4, Ln. 29-42).

4. Claims 32-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zdrojkowski in view of Hoffman in view of Beier and in further view of Alt and in further view of US Patent Number 6,094,702 to Williams et al.

(A) As per claim 32, Zdrojkowski teaches a method of upgrading a pressure generating system (Zdrojkowski: Col. 25.Ln. 2-6).

However, Zdrojkowski does not teach the following features which are well-known in the art as evidenced by Williams:

providing an upgrade request from an upgrade requester to a pressure generating system supplier, wherein the upgrade request includes a first product identifier associated with the medical device to be upgraded and a requested upgrade of the pressure generating system(Williams: Col. 3, Ln. 43-57);

maintaining a database, available to the pressure generating system supplier, that includes the first product identifier for the pressure generating system and an external access key associated with both the pressure generating system and an available upgrade from the one or more for that pressure generating system (Williams: Col. 3, Ln. 57-64);

accessing the database, by the pressure generating system supplier, to determine an external access key associated with both the pressure generating system to be upgraded and the requested upgrade (Williams: Col. 3, Ln. 53-64).

updating the database to indicate that the pressure generating system having the first product identifier has been upgraded with the desired upgrade (Williams: Col. 7, Ln. 14-23).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to have modified the system of Zdrojkowski with the features of Williams with the motivation of providing a means of installing resources into a system that are not enabled when a system is sold, as recited in Williams (Col. 2, Ln. 56-58).

The combined method of Zdrojkowski in view of Williams does not teach or suggest the following steps which are well known in the art as evidenced by Hoffman:

providing the external access key to the pressure generating system (Hoffman: Col. 4, Ln. 52-57); comparing the external access key with an internal access key associated with the medical device (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6);

enabling an upgrade of the pressure generating system responsive to the internal access key matching the external access key (Hoffman: Col. 4, Ln. 52-Col. 5, Ln.6).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the method of Zdorjkowski with the aforementioned features from Hoffman with the motivation of providing a highly secure method of upgrading a device, as recited in Hoffman (Col. 4, Ln. 52-Col. 5, Ln. 6). (Note: Even though Hoffman is directed towards an electric meter the concept taught in Hoffman to upgrade an electric meter is the similar to the concept of the claimed invention. In addition, the concept of securely upgrading a device or controller in Hoffman can be applied to a variety of devices and machines).

Zdorjkowski in view of Hoffman do not teach the following feature which is taught by Alt (Abstract and Col. 7, Ln. 50-Col. 8, Ln. 35)

maintaining a database for a plurality of systems, wherein the database includes (a) a product identifier unique to each pressure generating system in the plurality of systems, (b) one or more upgrades available to each pressure generating system in the plurality of systems, and (c) external access keys associated with each operating routine (Col. 1, Ln. 25-35 and Col. 5, Ln. 25-32).

At the time of the invention it would have been obvious for one of ordinary skill in the art to have modified the teachings of aforementioned references with the teachings from Alt with the motivation of having a means of preventing unauthorized upgrades to medical devices, as recited

in Alt (Col. 4, Ln. 23-30). (Note: Alt deals with medical devices generally and therefore it is the position of the Examiner that pressure generating systems are within the scope of Alt.)

(B) As per claim 33, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the step of providing the external access key to the pressure generating system includes providing the desired upgrade to the upgrade requester via a distribution media or a electronic communication link (Williams: Col. 3, Ln. 64-67).

(C) As per claim 34, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the step of providing the external access key and the desired upgrade includes providing the external access key on a first medium and providing the desired upgrade on a second medium (Hoffman: Col. 4, Ln. 52-65).

(D) As per claim 35, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the step of comparing the external access key with an internal access key takes place in the pressure generating system to be upgraded (Hoffman: Col. 4, Ln. 57-63).

(E) As per claim 36, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the step of updating the database includes providing a second product identifier (serial number) associated with the pressure generating system(Hoffman: Col. 4, Ln. 47-51).

(F) As per claim 37, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the pressure generating system includes a controller that controls operation of the pressure generating system according to an operating routine executed by the controller (Zdrojkowski: Col. 3, Ln. 3-23), wherein a set of operating features of the pressure generating system is determined based on the operating routine, wherein the internal access key is associated with each set of operating features of the medical device; and wherein providing the

external access key to the medical device comprises: providing an external device adapted to communicate with the controller (Hoffman: Col. 4, Ln. 17-42), establishing a communication link between the external device and the medical device, and inputting an external access key to the external device (Hoffman: Col. 4, Ln. 17-42)

(G) As per claim 38, in the combined method of Zdrojkowski in view of Williams in view of Hoffman, after the enabling step, upgrading the pressure generating system by providing an upgraded operating routine from the external device to the controller, wherein the controller thereafter executes the upgraded operating routine causing the pressure generating system to operate according to an upgraded set of operating features (Hoffman: Col. 1, Ln. 5-9).

(H) As per claim 39, in the combined method of Zdrojkowski in view of Williams in view of Hoffman comprises the step of providing the upgraded set of operating features to the external device from the pressure generating system supplier (Hoffman: Col. 1, Ln. 5-9).

(I) As per claim 40, in the combined method of Zdrojkowski in view of Williams in view of Hoffman each internal access key associated with each set of operating features of the pressure generating system is generated by the controller based on an access key generating algorithm each time the comparing step is to be performed, and further comprising storing the external access key in the pressure generating system as a new internal access key, and causing the controller to generate the new internal access key in a subsequent access key validation process (Hoffman: Col. 4, Ln. 17-42).

(J) As per claim 41, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the pressure generating system is a pressure support system comprising a pressure generating system adapted to generate a flow of breathing gas, wherein the controller executes a

first operating routine to control the operation of the pressure generating system according to a first set of operating features (Zdrojkowski: Col. 3, Ln. 3-23).

(K) As per claim 42, in the combined method of Zdrojkowski in view of Williams in view of Hoffman, after the enabling step, upgrading the pressure generating system by providing a second operating routine from the external device to the controller, wherein the controller thereafter executes the second operating routine causing the pressure support system to operate according to a second set of operating features (Hoffman: Col. 1, Ln. 5-9).

(L) As per claim 43, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the first set of operating features includes a first pressure support mode, and wherein the second set of operating features includes a second pressure support mode (Zdrojkowski: Col. 3, Ln. 51-58).

(M) As per claim 44, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the first pressure support mode is a bi-level pressure support mode, and wherein the second pressure support mode is a bi-level pressure support mode with a timed backup breath delivery capability (Zdrojkowski: Col. 14, Ln. 43-48). The motivation for making this modification to the teachings of Zdrojkowski is the same as set forth above, in the rejection of claim 1. (b) The first pressure support mode is a continuous positive airway pressure (CPAP) support mode and the second support mode is a variable positive airway pressure support mode in which the pressure delivered to the patient varies between inspiration and expiration (Zdrojkowski: Col. 3, Ln. 40-67).

(N) As per claim 45, in the combined method of Zdrojkowski in view of Williams in view of Hoffman the step of establishing a communication link includes providing a hard wired connection between the external device and the controller (Hoffman: Col. 4, Ln. 17-24).

(O) As per claim 46, in the combined method of Zdrojkowski in view of Williams and Hoffman the step of inputting an external access key to the external device includes manually entering the external access key into the external device via a keypad associated with the external device, or reading the external access key from a memory associated with the external device (Hoffman: Col. 4, Ln. 29-31).

(P) As per claim 47, in the combined method of Zdrojkowski in view of Williams and Hoffman the step of comparing the internal access key with the external access key takes place in the controller (Hoffman: Col. 4, Ln. 52-Col. 5, Ln. 6).

(Q) As per claim 48, in the combined method of Zdrojkowski in view of Williams and Hoffman each internal access key associated with each set of operating features of the pressure generating system is (1) generated by the controller based on an access key generating algorithm each time the comparing step is to be performed (Hoffman: Col. 4, Ln. 29-33), or (2) stored in advance in the pressure generating system and recalled from memory each time the comparing step is to be performed (Hoffman: Col. 4, Ln. 23-25).

(R) As per claims 49-51, the claims repeat features previously addressed in the rejection of claims 32-48, and are rejected on the same basis.

***Response to Arguments***

5. Applicant's arguments filed October 3, 2007 have been fully considered but they are not persuasive. The applicant's arguments will be addressed in sequential order as they were presented in the "Remarks" section filed on October 3, 2007.

(1) The Office Action dated April 5, 2007 was meant to be a non-final Office Action.

Therefore, the applicants' arguments stating that the Office action mailed on April 5, 2007 should be non-final are moot.

(2) The applicants argue that the '374 patent does not teach or suggest causing a controller to execute a second operating routine so that the pressure generating system operates according to a second set of operating features, however, the '374 does in fact disclose this feature at Column 19-35. The various operating modes discussed in this passage clearly contemplates operating at various pressures.

(3) In response to applicant's argument that '390 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the '390 patent is analogous to the '374 patent because the '390 patent deals broadly with upgrading electric devices and the device and system of the '374 patent is a device which runs electronically.

(4) In response to applicant's argument that the Office's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into

account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(5) Applicants argue that the '559 patent pertains to an implanted device and as such it is difficult to access the device once implanted and that in the present invention the pressure support system resides outside the body and can be readily accessed for maintenance and that therefore there is no motivation for combining the teachings of the '559 patent with the present invention. On this point, the Office is not clear because the teachings of the '559 have not been combined with the teachings of the instant invention in the 35 U.S.C. 103(a) rejections. Rather, the teachings of the '559 patent have been combined with the teachings from the '374, '390 and the '379 patent and motivation for making all of these combinations has been clearly set forth above in the explanations of these rejections.

(4) The applicants argue that the claims recite updated the database by assigning a new product identifier for an upgraded pressure generating system and that this step is equivalent to giving an upgraded product a new serial number and that this does not correspond to providing a unique identifier for a segment of data. However, the Office does not agree with this position. The step of assigning a new product identifier to an upgraded pressure generating system is analogous to providing a unique identifier for a segment of data because an upgraded pressure generating system is merely referring to a new operating routine which is in essence programming code and programming code can be considered a segment of data.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available

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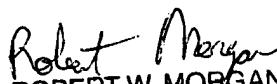
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through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

  
Vivek Koppikar

12/18/2007

  
ROBERT W. MORGAN  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3600